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No. 82-1402

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL DIVISION 1028, AMALGAMATED TRANSIT UNION,

Petitioner,

v.

THE CITY OF AURORA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENT CITY OF AURORA, ILLINOIS IN OPPOSITION

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I. QUESTIONS PRESENTED

The City of Aurora, Illinois disagrees with the petitioner's version of questions presented and respectfully submits that the following is the only question presented for review:

Does a controversy involving a municipal labor contract entered into pursuant to § 13(c) of the Urban Mass Transportation Act, which is otherwise not cognizable in Federal Court according to this Court's decision in *Jackson Transit Auth. v. Local Division 1285, Amalgamated Transit Union*, 457 U.S. 15 (1982), state a Federal cause of action simply because the municipality's denial of its alleged contractual obligations takes the form of City Council resolution authorizing the Mayor to terminate the contract?

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OPINION BELOW

The Respondent adopts the statement in the Petition for Certiorari.

JURISDICTION

The Respondent adopts the statement in the Petition for Certiorari insofar as it is based on this Court's holding

that a Federal Court has jurisdiction to determine if an action for breach of a § 13(c) Agreement states a federal cause of action. *Jackson Transit Auth. v. Local Division 1285*, 457 U.S. 15 (1982). However, Respondent questions whether federal jurisdiction exists in this case insofar as it is premised on the Union's claim under Article 1, § 10, United States Constitution, for the reasons set forth in "Reasons for Denying the Writ," infra.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Respondent adopts the statement in the Petition for Certiorari.

STATEMENT OF THE CASE

In this case, the Union sought to convert a cause of action for breach of its § 13(c) Agreement which is "governed by state law applied in state courts", *Jackson Transit Authority v. Local Division 1285*, 457 U.S. 15, n. 13 (1982) into a federal cause of action. The Union's claim is that since the alleged breach took the form of city council resolutions authorizing termination of the contract, those resolutions give rise to a claim under the contract clause, Article 1, § 10, United States Constitution.

In 1971, the City of Aurora, Illinois ("Aurora") took over a local private transportation system. On September 25, 1971, Aurora and the Union entered into an agreement pursuant to the requirements of § 13(c) of the Urban Mass Transportation Act ("UMTA"). The Agreement (hereinafter referred to as "the 1971 § 13(c) Agreement") provided that Aurora recognize the Union; that Aurora bargain collectively with the Union over the terms and conditions of employment; and that labor disputes between the parties, including the terms and conditions to be included in collective bargaining agreements, would be submitted

to binding arbitration. The 1971 § 13(c) Agreement was submitted to the U.S. Secretary of Labor, who certified to the U.S. Secretary of Transportation that the requirements of § 13(c) were satisfied and that Aurora was qualified for federal funds. Thereafter Aurora received the federal funds.

Since 1971, Aurora and the Union have entered into a number of collective bargaining agreements. The last such agreement was entered into on March 4, 1980 and, by its terms, expired on September 30, 1981. Art. XXXVIII of the agreement provided that ". . . in the event the parties reach an impasse during or after mediation, either party may terminate this Agreement upon ten (10) days written notice." There was no binding arbitration clause in this latest agreement.

From September, 1981 through April, 1982, the parties bargained and attempted to reach a new collective bargaining agreement. During this bargaining period the 1980 agreement was continued in effect.

In a letter, dated April 9, 1982, Aurora presented the Union with its "final and best offer" and informed the Union that unless the offer was ratified by the Union by April 27, 1982, the offer would be withdrawn and the 1980 agreement would be terminated. The Union rejected Aurora's offer.

On April 26, 1982, the Union notified Aurora that it was invoking paragraph 6 of the 1971 § 13(c) Agreement and submitting their labor dispute over the terms and conditions to be included in the new collective bargaining agreement to a board of arbitrators for binding arbitration. Aurora declined to engage in such arbitration.

On May 4, 1982, the City Council of Aurora passed and approved Resolution No. R82-1147 which provided, in part, as follows:

> Be it resolved that the Mayor is hereby authorized to provide written notice to Division 1028 of the Amalgamated Transit Union that its recognition as representative of certain transportation department employees and its labor agreement with the City of Aurora, covering said employees and dated March 4, 1980, shall be terminated effective 12:01 a.m., May 19, 1982.

On May 5, 1982, Mayor Jack Hill of Aurora, by letter, notified the Union as follows:

> By authority of City Resolution adopted May 4, 1982, and pursuant to the provisions of Article XXXVIII of the Labor Agreement dated March 4, 1980, between the City of Aurora and Division 1028 of the Amalgamated Transit Union, I am writing to notify you that the City does hereby terminate said labor agreement, effective 12:01 a.m., May 19, 1982.
>
> We will be pleased to rescind this notification if the Aurora members of your Division have ratified the City's final proposal by the termination date. Otherwise, the City Council will adopt personnel policies establishing wages, hours and working conditions for the employees of the Aurora Transportation Department.

Rather than accept this offer, the Union sued the City of Aurora in United States District Court alleging that the actions of the City violated § 13(c) of UMTA.[1] Suit was filed before this Court's decision in *Jackson, supra*. After the decision in *Jackson*, the Union amended its complaint to allege that Aurora's enactment of the City Council resolutions violated the contract clause of the United States Constitution, Art. 1 § 10. The District Court

[1] On May 18, 1982, the City Council adopted Resolution No. R82-1160 to implement its decision to terminate the contract in which it established wages, hours and conditions of employment for its transit workers.

dismissed the Union's action in a summary one paragraph order which provided as follows:

> The United States Supreme Court has recently held explicitly that claims under Section 13(c) of the Urban Mass Transportation Act of 1964, 49 USC 1609(c) failed to state a federal cause of action. *Jackson Transit Authority v. Local Division 1285 Amalgamated Transit Union, AFL-CIO-CLC,* ___ U.S. ___, (Slip Opinion 81-411, June 4, 1982). Nor does the action of the Aurora City Council in passing the resolution of May 4 and May 18, 1982 'impair' the plaintiff's contract rights in violation of contract clause of the United States Constitution, Article 1, 10. Moreover, *Jackson, supra,* expressly held that '42 USC 1983 (does not) permit the Union to bring suit in a federal court for breach of a 13C agreement.' *See Jackson, supra,* at 14 n. 12. Accordingly, this Court finds that plaintiff has failed to state a cause of action, and therefore has no likelihood of prevailing on the merits of its claim. The motion for preliminary injunction is denied, and this case is dismissed."

The Union appealed. On its appeal, the Union petitioned the Court of Appeals for the Seventh Circuit for an injunction pending appeal. Acting on the request for injunction, the Court of Appeals summarily affirmed the District Court's ruling on the merits, in an unreported opinion (Pet. App., pp. A. 2-3). On November 17, 1982, the court denied the Union's Petition to grant it a Hearing, for Rehearing and Rehearing En Banc.

REASONS FOR DENYING THE WRIT

The Petition for Certiorari should be denied by this Court because the decision of the Court of Appeals is correct; the decision is in conformity with the decision of other circuits which have denied the same contract clause claim made by the Union, *Local Div. 589 A.T.U. v. Massachusetts,* 666 F.2d 618 (1st Cir. 1981), *cert. den.,* ___ U.S. ___, 102 S. Ct. 2948 (1982); and, further, Respondent

submits that neither the decision below nor the record raises the question presented in the Petition.

This case is but a simple breach of contract case. The Union alleges that the 1971 § 13(c) Agreement between the Union and Aurora is a valid and subsisting agreement; that it has not been superseded by subsequent collective bargaining agreements, including the 1980 agreement which, by its terms was terminable by either party; and that the 1971 § 13(c) Agreement obligates Aurora to recognize the Union as a bargaining agent and to engage in interest arbitration with the Union.

Aurora, on the other hand, denies that the 1971 § 13(c) Agreement was intended by the parties to be perpetual in nature; that the 1971 § 13(c) Agreement was superseded by subsequent collective bargaining agreements, including the 1980 agreement; that Aurora had no obligations to the Union beyond those imposed in the 1980 collective bargaining agreement, with which it has complied; and, that since the 1980 agreement, by its terms, could be terminated by Aurora and was so terminated, there is no contractual duty owed by Aurora to the Union.

Both sides may well have substantial arguments, on the merits, as to the rights and duties imposed on each by the 1971 § 13(c) Agreement. But, as this Court definitively held in *Jackson, supra,* the parties' respective arguments must be presented to, and weighed by, a state court and not a federal court. ". . . Congress made it absolutely clear that it did not intend to create a body of federal law applicable to labor relations between local government entities and transit workers," *Jackson, supra, n. 9.* Because of this clear Congressional intent, the Union is not permitted to bring a federal suit and the Union's sole judicial remedy for alleged violation of a § 13(c) Agreement is to ". . . pursue a contract action in state court." *Jackson, supra,* n. 13.

The Union, however, has attempted to convert this state claim into a federal claim by artfully pleading, in its amended complaint, that the City of Aurora violated the contract clause, Art. 1, § 10, United States Constitution, when it allegedly breached the 1971 § 13(c) Agreement. The Union bases its argument on the fact that Aurora's refusal to comply with the 1971 § 13(c) Agreement took the form of a City Council resolution authorizing its mayor to terminate the Union's recognition as bargaining agent.

The Union's argument is disingenuous.

The contract clause applies only to state legislative acts, not to state judicial acts or to national legislation. See, generally, *Tidal Oil Co. v. Flanagan*, 263 U.S. 444 (1924). Here, there has been no legislative act by the State of Illinois. Whatever state law governed the construction of the § 13(c) agreement before Aurora terminated the contract remains the state law to be applied by a state court in construing that agreement. Indeed, the Union's Complaint contains a Count, based upon "pendent jurisdiction," in which it is forcefully alleged that Aurora's termination is unlawful as a matter of Illinois state law.

The Aurora City Council's resolutions do not amount to a "law" within the meaning of Art. 1, § 10 of the United States Constitution which forbids "laws impairing the obligation of contracts." Of course, a municipal ordinance may be such an exercise of state delegated legislative power and have such a force of law within the municipal limits that it may properly be considered a "law" within the meaning of Art. 1, § 10. *Eg., New Orleans Water-works Co. v. Louisiana Sugar Ref. Co.*, 125 U.S. 18 (1888).

However, the Aurora resolutions in this case are not such ordinances. They do not change contract law in Illinois. They do not change contract law in Aurora. They do not declare § 13(c) agreements to be unlawful or

unenforceable. Rather, these resolutions do no more than authorize the Mayor to cease recognizing the Union as a bargaining agent and to terminate the City's contractual relationship with that Union. Resolutions such as these undoubtedly proceed or accompany any municipality's actions with respect to any § 13(c) agreement.

The Union's contention, therefore, is that Aurora refused to perform a contract and, since Aurora is a municipal corporation and that refusal was embodied in the form of a resolution, the resolution is a law impairing the obligation of that contract. This contention has been definitively addressed and denied by this Court in cases neither cited nor discussed by petitioner.

As this Court stated in *McCormick v. Oklahoma City*, 236 U.S. 657, 660 (1914):

> ". . . [T]he mere fact that a city is a municipal corporation does not give to its refusal to perform a contract the character of a law impairing its obligation. . . ."

See, also, City of Dawson v. Columbia Ave. Savings Fund, 197 U.S. 178, 181 (1905); *Brown v. Colorado*, 106 U.S. 95 (1882).

In *St. Paul Gaslight Co. v. St. Paul*, 181 U.S. 142 (1901), this Court dismissed, for want of federal jurisdiction, a contract clause claim which was brought by the St. Paul Gaslight Co. The alleged contract required the City to pay the interest of the cost of construction of certain unused gaslamps in the city. By resolution, the city required the Gaslight Company to remove the unused lamps and, by further resolution, declared its intent that the City would not pay the contested interest.

In dismissing the contract clause claims, this Court held that the resolution was not a "law" within the meaning of the contract clause because:

"That is to say, it was but a denial by the city of its obligation to pay, and a notice of its purpose to challenge in the future the existence of the duty to make such payment. This denial, while embodied in an ordinance, was no more efficacious than if it had been expressed in any other form, such as by way of answer filed on behalf of the city in a suit brought by the company against the city to enforce what it conceived to be its rights under the contract. When the substantial scope of this provision of the ordinance is thus clearly understood, it is seen that the contention here advanced of impairment of the obligations of the contract arising from this provision of the ordinance reduces itself at once to the proposition that wherever it is asserted on the one hand that a municipality is bound by a contract to perform a particular act and the municipality denies that it is liable under the contract to do so, thereby an impairment of the obligations of the contract arises in violation of the Constitution of the United States. *But this amounts only to the contention that every case involving a controversy concerning a municipal contract is one of Federal cognizance, determinable ultimately in this court. Thus, to reduce the proposition to its ultimate conception is to demonstrate its error.*" Id. 149. (emphasis supplied)

In short, an alleged breach of contract by a municipality does not amount to an unconstitutional impairment of the obligations of contract simply because the municipality's alleged breach takes the form of a resolution authorizing that breach. Such a breach, if it exists, only gives rise to an action to enforce the contract, and it does not create federal jurisdiction under the contracts clause. As Justice Holmes stated in *City of Dawson, supra,* 197 U.S. at 181-2:

"The attempt, by an afterthought, to give jurisdiction by setting up constitutional rights, must fail also. The bill presents a naked case of breach of contract . . . We repeat that something more than a mere refusal of a municipal corporation to perform its contract is necessary to make a law impairing the

obligation of contracts, or otherwise to give rise to a suit under the Constitution of the United States."

Here also the Union has alleged a "naked case of breach of contract." Of course, the Union may bring an action to enforce its § 13(c) agreement. However, since any action to enforce a § 13(c) agreement must be brought in a state court, *Jackson, supra,* the lower courts were correct in dismissing this case.

CONCLUSION

For the reasons set forth above, a writ of certiorari should be denied.

Respectfully submitted,

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